



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

December 26, 2019

The Honorable Edgardo Ramos
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *State of New York v. Pennsylvania Higher Educ. Assistance Agency*, No. 19-cv-9155 (ER)

Dear Judge Ramos:

Plaintiff the New York Office of the Attorney General (NYAG) objects to defendant Pennsylvania Higher Education Assistance Agency (PHEAA)'s December 23, 2019 request to supplement its December 2, 2019 letter (Dkt. No. 15) setting forth the basis for its proposed pre-trial motion with a Statement of Interest filed by the U.S. Department of Education (Department) on December 20, 2019 in an unrelated lawsuit.

The submission is not appropriate at this juncture. The Statement of Interest raises no new arguments that PHEAA has not raised directly or that have not been raised previously by the Department. Nor is it relevant to this case. The Statement of Interest was submitted in a case challenging a state licensing scheme. NYAG's state law claims arise under state laws of general application prohibiting fraud and deceptive practices, not under a state licensing regime.

The Department raised these same arguments in an earlier case involving the District of Columbia's student loan servicer licensing regime. In that case, *Student Loan Servicing Alliance v. District of Columbia*, the court rejected the assertion of sovereign immunity, holding that a state law is unconstitutional if it "regulate[s] the [federal] Government directly or discriminate[s] against it." 351 F.Supp.3d 26, 47 (D.D.C. 2018). The court also rejected the Department's broad assertion of preemption, holding only that D.C.'s licensing scheme was preempted to the extent that it would prevent a servicer deemed eligible by the Department from servicing federally-owned loans in D.C. *Id.* at 63.

Because the arguments raised by the Department's recent Statement of Interest are neither new nor directly relevant to the claims at issue in this lawsuit, we respectfully request that the Court deny PHEAA's request to supplement its December 2, 2019 letter.

Respectfully submitted,

/s/ Carolyn M. Fast

Carolyn M. Fast

Assistant Attorney General

Bureau of Consumer Frauds and Protection

(212) 416-6250

carolyn.fast@ag.ny.gov